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SIPDIS

DEPARTMENT FOR EEB/IFD/OIA (HEATHER GOETHERT AND KIMBERLY BUTLER)
AND L/CID (GABRIEL SWINEY AND CAMERON HOLLAND)

E.O. 12958: N/A

TAGS: EINV CASC PGOV KIDE UZ

SUBJECT: 2008 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATION

CASES: EMBASSY TASHKENT SUBMISSION

REF: STATE 43784

¶1. (U) The United States Government is aware of nine (9) claims of United States persons against the Government of Uzbekistan, two (2) of which have been resolved.

¶2. (U) a. Claimant A

b. 1998

c. Claimant A is a U.S. trading company that exported alcohol to Uzbekistan. According to the Claimant, in 1998, customs authorities seized Claimant A's shipment of ethyl alcohol after a Presidential decree changed the requirements for permissible imports of ethyl alcohol. At the time of seizure, the shipment was not destined for Uzbekistan. Claimant A had redirected it to Tajikistan and Kyrgyzstan after the decree was announced, but it was seized while transiting Uzbekistan. Although the shipment was already in the country before the decree took effect, customs agents seized it for failing to comply with the new rules. Claimant A's shipment was worth approximately USD 500,000. Claimant A's legal representative in Uzbekistan was unable to convince the Prosecutor's office to take action in the case. The U.S. Embassy last had contact with Claimant A in 2000, at which time Claimant A informed the Embassy they had voluntarily abandoned resolving the case.

¶3. (U) a. Claimant B

b. 2002

c. Claimant B was the chief operator of a soft drink manufacturing plant in Uzbekistan after its independence in 1991. However, Claimant B alleges that following a personal dispute between one of the owners of Claimant B and the daughter of a high official of the Government, Claimant B executives were all forced to leave the country and have not been allowed to return or to conduct business in Uzbekistan. Following prolonged proceedings in the Tashkent Economic Court and Supreme Court, Claimant B's shares in the bottling plant were reduced, making a large U.S. soft drink corporation the major shareholder and operator of the bottling plant rather than Claimant B. In addition, the GOU confiscated many assets of Claimant B, including 600,000 tons of sugar, 120 cars, 70 computers, and the Sergeli wholesale supermarket, which had been another large investment of Claimant B. The GOU has explained these confiscations as the result of convictions for tax violations. Finally, a number of employees of Claimant B were arrested. The U.S. Government has made representations to the GOU to ensure fair treatment for Claimant B. The U.S. Embassy's last contact with Claimant B was in 2003. Claimant B has left Uzbekistan.

¶4. (U) a. Claimant C

b. 2001

c. Claimant C has been growing and exporting cotton in Uzbekistan

since 1997. The company's investment is partially funded by the World Bank. The Seed Law of Uzbekistan guaranteed it the right to export its product, but according to the Claimant, it has been forced to surrender all or part of its hard currency earnings for exchange to soum at the official rate since 1999. In addition, Customs officials have often detained cotton export shipments and disregarded agreements reached under the Seed Law of Uzbekistan. The GOU has reduced the acreage Claimant C is allowed to plant in high-yield seed varieties from just over 10,000 hectares in 1999, to 8,000 hectares in 2001 and then to 5,700 hectares in 2003. Local GOU authorities are interfering in the management of Claimant C's farms by keeping farmers under state production plans, even though the original business plan, approved by the GOU, states the company's farms are exempt from state orders. According to the Claimant, continued obstruction by the GOU has made it impossible for it to pay off millions of dollars in loans and will lead to its financial collapse.

The U.S. Embassy successfully utilized the visit of U.S. Senator Shelby in January 2002 to force the GOU to focus on a resolution of problems for Claimant C. The Embassy arranged a meeting between Senator Shelby and Elyor Ganiev, Deputy Prime Minister for the Agency for Foreign Economic Relations. Claimant C's Managing Director and Ganiev also met to determine a way for Claimant C to pay back the USD 4.3 million it owes to an Alabama bank. The U.S. Government has assisted Claimant C as appropriate, and the Claimant has been able to repay the Alabama bank and continue its cotton project. Also, the surrender requirement is not the punishment it once was, as the unification of currency rates has diminished the negative impact of this requirement. At that time, Claimant C was able with U.S. government assistance to negotiate additional cotton acreage to use in its business and continue payment on its outstanding loan.

Unfortunately, in May 2005 the Government of Uzbekistan sent a team of inspectors, headed by the National Security Service, to investigate Claimant C's company. Claimant C perceived this as unwarranted harassment stemming from familial ties with Uzbek opposition politicians. The Embassy assisted Claimant in addressing this issue by requesting a meeting with GOU officials and sending Embassy officers as observers during the National Security Service Investigation. The Prosecutor's Office nonetheless subsequently brought criminal charges against the company, freezing its operations and accounts and the GOU physically blocked the factory from receiving raw cotton. However, in early 2006, Claimant C's fortunes turned when it partnered with a local company. While the Claimant alleges that there is an outstanding GOU debt of three million USD to the Claimant, it says that the situation has improved. The Embassy continues to monitor the situation and has regular contact with Claimant C.

15. (U) a. Claimant D

b. 2002

c. Claimant D provided agriculture chemicals to the GOU in 2001 in accordance with a government-issued tender in the amount of USD 340,000. Claimant D asserts that it has never been paid for the products. In February 2003, the Ambassador sent a letter to PM Sultanov regarding this case and in 2004 the U.S. Government approached high-level GOU officials to assist Claimant D in resolving the payment dispute. The U.S. Embassy pointed out on numerous occasions that if the GOU does not resolve this issue other companies will not invest in the agricultural sector. Assistant Secretary of Commerce William Lash III raised Claimant D's dispute with Deputy Prime Minister Rustam Azimov in November 2004, advising the DPM that refusing to meet commercial obligations will lead other businesses to avoid Uzbekistan. As of the Embassy's last contact with Claimant D in 2005, payment had yet to be rendered. Claimant D has since been purchased by a European company.

16. (U) a. Claimant E

b. 2003

c. Similar to the issue faced by Claimant D, Claimant E provided agricultural chemicals to the GOU in 2001 in the amount of USD

245,000 and asserted that it had not been paid. In February 2003, the Ambassador sent a letter to PM Sultanov regarding this case and in 2004 the US Government approached high-level GOU officials to assist Claimant E in resolving the payment dispute. The U.S. Embassy has raised this issue with GOU officials, pointing out that it hampers their ability to attract investment to the agricultural sector. Assistant Secretary of Commerce William Lash III raised Claimant E's dispute with Deputy Prime Minister Rustam Azimov in November 2004, advising the DPM that refusing to meet commercial obligations will lead other businesses to avoid Uzbekistan. As of the Embassy's last contact with the Claimant in 2004, payment had yet to be rendered. Claimant E is no longer present in the country.

17. (U) a. Claimant F

b. 2003

c. Claimant F purchased 51 percent of shares in an Uzbek fruit processing plant in May 2002 from the GOU state property committee (GKI). According to Claimant F, it made an initial investment payment of approximately USD 30,000 in June 2002 and a second payment of approximately USD 54,000 in October 2002. In November 2002, GKI returned Claimant F's second payment and declared that it had cancelled the contract. This action, which Claimant F believes was motivated by GKI's desire to sell the plant to a Russian company, was compounded by a ruling on the matter against the claimant by a Tashkent court, causing the claimant to lose its initial investment.

Separately, Claimant F is involved in a joint venture, having purchased 33.3 percent of the shares of another American company. Due to a privatization decree, the GOU sold the government's portion of the venture, including the property on which the company operates. Claimant F offered to purchase the building with a purchasing price based on previous investments. However, the GKI requested double the amount of the independently assessed value of the building at USD 208,000.

In April 2003, the Ambassador sent a letter to PM Sultanov requesting that his staff investigate this issue. As of the U.S. Embassy's last contact with the Claimant in 2005, the company had partially resolved some issues, but continued to battle the GOU. Claimant F is still present in the country.

18. (U) a. Claimant G

b. 1996

c. Claimant G, a Swiss company with a U.S.-owned subsidiary entered into a written contract with a state-owned enterprise to deliver 50,000 metric tons of Kazakh wheat. According to the Claimant, the wheat was delivered, but the Uzbek party never remitted payment. Despite repeated inquiries by Claimant G, at times facilitated by the U.S. Government, payment was not forthcoming. In 1997, Claimant G brought its case to the Grain and Feed Trade Association (GAFTA) under an arbitration proceeding required by the written contract controlling the grain purchase. GAFTA ruled on this matter, and ordered the Uzbek enterprise to pay Claimant G for the value of the shipment plus interest, or approximately USD 18 million. An appeal of this ruling was denied in July 1998. The U.S. Embassy raised the issue with senior government officials, including the Deputy Prime Minister. As of the Embassy's last contact with the Claimant in 2004, payment had not been rendered. Claimant G is no longer present in the country.

19. (U) a. Claimant H -- Resolved

b. 2006

c. According to Claimant H, a mining company, from March 2006 to August 2006, it was under increasing pressure from the GOU, which effectively took over the company's assets and caused the Claimant to depart Uzbekistan. During this time, the Claimant suffered repeated audits, removal of permanent beneficial tax status, a fine of USD 60 million for alleged non-payment of back taxes, a

government declaration of bankruptcy, and media criticism for damaging the environment. Additionally, the government revoked the presidential decree establishing a joint venture in which the Claimant was involved, resulting in the loss of the Claimant's benefits, including protection from new taxes and regulations adopted after the initial investment.

Claimant H filed for arbitration with two organizations: the World Bank's International Center for the Settlement of Investment Disputes and the Arbitration Institute of the Stockholm Chamber of Commerce. In late June 2007, Claimant H informed the U.S. Embassy that it had reached an agreement with the Government of Uzbekistan resolving the dispute. In a subsequent filing with the Securities and Exchange Commission, the Claimant reported that under the terms of the agreement, the Government of Uzbekistan agreed to pay the company USD 80 million and also agreed to pay outstanding obligations to the Claimant's suppliers and creditors. On August 27, 2007 the Claimant informed the Department of State that the final agreement had been signed. The Claimant has since received four separate payments of USD 20 million.

¶10. (U) a. Claimant I -- Resolved

b. 2006

c. Claimant I, a leading mobile communications provider, started a U.S.-Uzbek joint venture in 1996. In 2000, the U.S. partner purchased the Uzbek Government's share of the venture. In late 2006, the U.S. partner entered negotiations aimed at selling its stake in Claimant I to a Qatari firm. According to the Claimant, the Uzbekistan Agency for Telecommunications and Information Technology (the Telecom Agency) pressured the U.S. partner to sell the firm instead to a Russian investor, an option that the U.S. partner rejected.

The Telecom Agency proceeded to employ a series of legal and regulatory measures against Claimant I. In 2006, the state tax authority sued the Claimant for allegedly evading taxes on income from international roaming charges, but the charge was resolved in the Claimant's favor in Uzbek courts. In addition, the Telecom Agency repeatedly denied approval for the Claimant to establish transmission stations to expand its service network. The Agency also sued the Claimant alleging that the firm illegally changed its name, and that the U.S. partner in 2000 illegally purchased the Uzbek Government's share of the firm for a price far below fair market value.

After a two-hour service outage across much of the Claimant's network in January 2007 caused by a power surge, the Telecom Agency suspended the Claimant's operations for 10 days. After the suspension ended, the Agency only permitted restoration of service gradually over a two-month period. The service interruption led to a substantial loss of customers. The Department of State raised the issue with the Uzbek Embassy in Washington, and the U.S. Embassy raised it with the Foreign Ministry in Tashkent. South Central

Asian Deputy Assistant Secretary Evan Feigenbaum raised it in Tashkent with Telecom Agency Chairman Abdulla Aripov in March 2007. As a direct result of this meeting, the Agency permitted full restoration of the Claimant's operations on April 1, 2007.

On July 16, 2007, TeliaSonera AB, a leading telecommunications company in the Nordic and Baltic region, acquired 100 percent of the shares of Claimant I, including all its operations in Central Asia. Claimant I's joint venture continues to provide mobile phone service in Uzbekistan under the new ownership.

¶11. (U) None of the claimants have signed privacy waivers. The claimants are:

Claimant A: Empire United Lines
Claimant B: Ross Trading
Claimant C: Central Asia Seed Company (CASC)
Claimant D: Dow AgroSciences
Claimant E: Troy BioSciences Inc.
Claimant F: Vergest Ltd. and JV Uzbek Xerox Systems
Claimant G: ROMAK
Claimant H: Newmont Mining, Joint Venture

Claimant I: MCT Corp., Coscom Joint Venture
NORLAND